



Comptroller General  
of the United States

Washington, D.C. 20548

R. Berger

## Decision

**Matter of:** American Material Handling, Inc.

**File:** B-261795

**Date:** June 29, 1995

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### DECISION

American Material Handling, Inc. protests as ambiguous the specifications of solicitation No. WOO-95-23 issued by the Bureau of Indian Affairs, Department of the Interior.

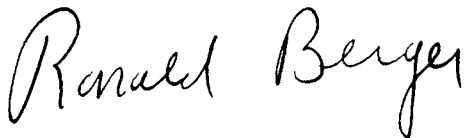
We dismiss the protest as untimely.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58 (closing occurring 1 day following filing of agency-level protest constitutes initial adverse agency action). It is our general view that once the contracting activity proceeds with opening bids or accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221.

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Here, American Material filed its agency level protest on May 12; the agency conducted bid opening as scheduled on May 17. On June 19, the agency denied American Material's protest. Bid opening, however, constituted adverse agency action; American Material could not await a written denial of its agency-level protest to file here. Therefore, any subsequent protest had to be filed in this Office within 10 working days after bid opening. This protest, filed here on June 23, does not meet that requirement.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the printed name and title.

Ronald Berger  
Associate General Counsel